

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION**

MICHAEL J. GARVEY,

Plaintiff,

v.

SETERUS, INC.; SUBSTITUTE TRUSTEES  
SERVICES, INC.; HUTCHENS LAW FIRM, LP;  
LACEY M. MOORE; CHRISTOPHER T.  
SALYER; SHIANN SCHMIDT; SHAPIRO &  
INGLE, LLP; MICHAEL JAY EMREY; KYLE  
STEWART

Defendants.

CASE NO. 5:16-cv-00209-RLV

**DEFENDANT SETERUS, INC.'S  
MOTION FOR JUDGEMENT ON THE PLEADINGS**

Defendant, Seterus, Inc. (“Seterus”), by and through its undersigned counsel, hereby moves pursuant to Rule 12(c) of the Federal Rules of Civil Procedure for an entry of judgment on the pleadings (the “Motion”). Taken in a light most favorable to plaintiff, Michael J. Garvey, (“Plaintiff”) his complaint filed in this action, [Doc 1] (“Complaint”) along with the answer filed by defendant, Seterus, [Doc 24] (“Answer”) reveal no actionable claim upon which relief may be granted.

Pursuant to Local Rule 7.1(C), defendant Seterus, contemporaneously with this Motion, has filed its *Brief in Support* and shows unto the Court the following:

**1. Seterus has complied with the debt verification requirements of 15 U.S.C. § 1662(g) of the Fair Debt Collection Practices Act (“FDCPA”).** Plaintiff’s Complaint does not allege that Seterus failed to *mail* verification of the debt to Plaintiff as required under the statute,

and Plaintiff's own exhibits suggest that Plaintiff's allegation that he failed to *receive* the required verification is not plausible. Moreover, Seterus' Answer plainly asserts that the proper verification of the debt was mailed to Plaintiff at his home address within one month of the date Plaintiff requested verification. Thus, no possible violation of section 1962(g) of the FDCPA is presented by the pleadings in this matter.

**2. The Complaint states no FDCPA Claim with regard to communications made by Seterus.** With regard to FDCPA sections 1962(c) and 1962(g), the Plaintiff has failed to allege any circumstance under which any communication made by Seterus to Plaintiff was prohibited by law.

**3. Plaintiff's various other claims of FDCPA violations are conclusory and unsupported by allegations of fact.** Plaintiff's Complaint references a number of other sections of the FDCPA including sections 1962(e), (f), (i) and (j), but it is devoid of any explanation of: a) what activities or communications implicate these sections of the statute; b) what, if any, activities were purportedly done by Seterus; or c) how any of them violated any particular provision of the FDCPA.

WHEREFORE, for all the foregoing reasons, and those set forth in its *Brief in Support*, defendant, Seterus, Inc. respectfully requests that this Court enter an order that 1) enters judgement on the pleadings in favor of Seterus; 2) dismisses Plaintiff's Complaint as to Seterus with prejudice; and 3) provides all other and/or further relief as justice requires.

Respectfully submitted this 28th day of February, 2017.

**McGUIREWOODS LLP**

*/s/ David R. DiMatteo*

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David R. DiMatteo, N.C. State Bar No. 35254

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*Counsel for Defendant*

*Seterus, Inc.*

## **CERTIFICATE OF SERVICE**

This is to certify that the undersigned has on this 28<sup>th</sup> day of February, 2017, electronically filed the foregoing **Defendant Seterus, Inc.'s Motion for Judgement on the Pleadings** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

Jason K. Purser  
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*Attorneys for Defendants Shapiro & Ingle, LLP, Michael Jay Emrey and Kyle Stewart*

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*Attorneys for Defendants Substitute Trustee Services, Inc., Hutchens Law Firm, LP, Lacey M. Moore, Christopher T. Salyer, and Shiann Schmidt*

Additionally, I hereby certify that a copy of the foregoing **Defendant Seterus, Inc.'s Motion for Judgement on the Pleadings** was served upon Plaintiff by depositing a copy thereof in the custody of the United States Postal Service, first-class postage prepaid, addressed to:

Michael J. Garvey  
330 Walter Godbey Road  
West Jefferson, NC 28694  
*Pro Se Plaintiff*

/s/ David R. DiMatteo  
David R. DiMatteo